United States Court of Appeals

for the

District of Columbia Circuit



TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

445

OCTOBER TERM, 1906

No. 1706.

THOMAS R. RILEY AND WILLIAM W. RILEY, APPELLANTS,

vs.

MARY E. THOMPSON AND FRANCIS I. THOMPSON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JULY 21, 1906.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1906.

No. 1706.

THOMAS R. RILEY AND WILLIAM W. RILEY,
APPELLANTS,

vs.

MARY E. THOMPSON ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 23, 1906.

In the Court of Appeals of the District of Columbia.

No. 1706.

THOMAS R. RILEY ET AL., Appellants,
vs.
MARY E. THOMPSON ET AL.

a Supreme Court of the District of Columbia.

No. 25657. In Equity.

MARY E. THOMPSON and FRANCIS I. THOMPSON, Plaintiffs,
vs.
THOMAS R. RILEY and WILLIAM W. RILEY, Defendants.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:

1 *Bill.*

Filed August 28, 1905.

In the Supreme Court of the District of Columbia.

Equity Cause 25657.

MARY E. THOMPSON and FRANCIS I. THOMPSON, Plaintiffs,
vs.
THOMAS R. RILEY and WILLIAM W. RILEY, Defendants.

The complainants respectfully show unto the court as follows:

1st. Mary E. Thompson is a married woman, and brings this suit in her own right in respect to her separate estate.

Complainant, Francis I. Thompson is the husband of said Mary E. Thompson, and sues as such and as the maker of the note herein described. Both of said complainants are citizens of the United States and residents of the District of Columbia.

2d. The defendants, Thomas R. Riley and William W. Riley are sued as trustees and in their own right as hereinafter specified. Both

of said defendants are citizens of the United States, and residents of the District of Columbia.

3rd. Heretofore, to wit: On the 29th day of July 1903, the
2 complainant, Mary E. Thompson, was the owner of sub-lot 25 in Block 4 of Clark and Chapell's subdivision of a certain tract of land, situated in the District of Columbia, outside of the City of Washington, and known as the "Palisades of the Potomac," as said subdivision is recorded in County Book 7, page 93 of the records of the Surveyor's Office of the District of Columbia.

4th. That heretofore to wit: On the 23d day of August, 1903, the complainant, through her husband, the said Francis I. Thompson, borrowed of the defendant, Thomas R. Riley the sum of $500.00, and on said date the complainants conveyed said land to said William W. Riley, son of the defendant Thomas R. Riley in fee-simple. That while said deed purported to be an absolute conveyance in form, yet the same was made to sercure the payment of said sum of $500.00 only and no other purpose.

5th. That subsequent to the making of said note and the deed referred to, the said Francis I. Thompson, acting for complainant, Mary E. Thompson, purchased of said Thomas R. Riley, building materials for use in the construction of a house she was then erecting upon said real estate amounting to $536.99.

6th. That said sum of $500.00 was borrowed to be used for the purpose of erecting said dwelling. That at the time said lot was conveyed to said William W. Riley, there was an existing encumbrance upon same of $160.00, but whether or not it was ever paid by said defendant, complainants are not informed. That while said deed was absolute in form, as aforesaid it was intended
3 only to secure said Thomas R. Riley, the sums above referred to.

7th. That on the — day of —— 1904, the said William W. Riley at request of said Thomas R. Riley, and without notice to either of your complainants, sold said property to one Mary W. Worrell, and complainants are informed that the said defendants or the said Thomas R. Riley received the sum of $2,000.00 or more for said real estate.

8th. The said Thomas R. Riley and William W. Riley have been called upon repeatedly to account to your complainants, for the sum received from the sale of the said property, in order that they might know what was due; that said Thomas R. Riley at first denied the right of your complainants to an accounting from him or that any sum whatever was due them on account of said transaction, but within the last three months each of them have acknowledged the right of the complainants to an accounting, admitting that there was a balance due them. And while they have repeatedly promised to render an account they have failed to do so, notwithstanding the complainants have waited for more than a year, hoping thereby to avoid litigation.

9th. Complainant is advised and so avers that she is entitled to have the deed made to the said William W. Riley, as aforesaid, declared to be a mortgage only, and that she is entitled to have said

William W. Riley and Thomas R. Riley discover and account to her the sum received from the sale of said property and after the payment of what is justly due them, to pay over to her the remainder thereof.

4 10th. The complainants charge that there is now due to said Mary E. Thompson from the said defendants, jointly and severally, the sum in excess of what said property sold for over and above the amount borrowed, to wit: $500.00, and the material bill of $536.99, and complainants are therefore without remedy, save by the aid of this honorable court.

The premises considered, complainants therefore pray as follows:

A. That the said William W. Riley and Thomas R. Riley may be required to appear and answer the exigencies of this bill, but not under oath, answer under oath being hereby expressly waived.

B. That said William W. Riley and Thomas R. Riley be required to discover and account to complainants the amount received from the sale of said property.

C. That a decree may be passed requiring the said Thomas R. Riley and William W. Riley to pay to your complainant such sums as shall be found to be due, upon the final statement of their accounts.

D. That all necessary references may be had and accounts taken and stated. That your complainants may have such other and further relief as the nature of the case may require.

MARY E. THOMPSON.
FRANCIS I. THOMPSON.

LEO SIMMONS,
Sol. for Compl'ts.

5 We do solemnly swear that we have read the foregoing bill by us subscribed and know the contents thereof, and the matters and things therein stated are true and those stated upon information and belief, we believe to be true.

MARY E. THOMPSON.
FRANCIS I. THOMPSON.

Subscribed and sworn to before me this 28th day of August, 1905.

A. ROSA HAUSMANN,
Notary Public.

[SEAL.]

Joint and Several Answers of Defendants.

Filed December 29, 1905.

In the Supreme Court of the District of Columbia.

In Equity. No. 25657.

MARY E. THOMPSON ET AL.
vs.
THOMAS R. RILEY ET AL.

The answers, joint and several, of Thomas R. Riley and William W. Riley, defendants, to the bill of complaint of Mary E. Thompson and Francis I. Thompson, the above named complainants.

In answer to bill we say:

1, 2, and 3. We admit the truth of the facts stated in paragraphs one, two and three of the bill.

4. In answer to paragraph four, we say it is true the com-
6 plainant on August 23, 1903, conveyed sub lot 25, Block 4, Palisades of the Potomac, to defendant William W. Riley, and we further say that said lot was then subject to an encumbrance of $165. for purchase money, and that said conveyance was intended as security, not only for $500. loaned by Thomas R. Riley to the said Francis I. Thompson, but for the price of such lumber and millwork as the defendant Thomas R. Riley might furnish said Francis I. Thompson to build a house on said lot; that the said Thomas R. Riley supplied the said Francis I. Thompson lumber and millwork of the value of $1432.25, which was used by him in erecting said house; that after said house was completed, the complainants being unable to pay the said Thomas R. Riley the said house, was, after notice to the complainants, sold for the price of $2000., of which $150 was in cash, and the balance in monthly notes, secured upon the property, payable in from 1 to 74 months after —— 1904; that after deducting the encumbrance of $165. on the lot; $75. due the Rosslyn Brick Company for brick used in the house; $500. borrowed of Thomas R. Riley; insurance, $9; amount due the said Thomas R. Riley for lumber and millwork, $932.25; the further sum of $350., being the discount of the notes for deferred purchase money; and the further sum of $250. for the personal services of the said Thomas R. Riley; there remained a surplus of $123.79 due the complainant Mary E. Thompson, which the defendant Thomas R. Riley is ready and willing to pay her.

5. Answering paragraph five of the bill, we say that subsequent to August 23, 1903, the complainant purchased of Thomas R. Riley
7 lumber and mill-work for said house of the value of $932.25, and not $536.99, as alleged in said paragraph.

6. In answer to paragraph six of the bill, we say that it is true said lot, at the time said sum of $500. was borrowed, was sub-

ject to an encumbrance of $160., being for the price of the lot, nothing having been paid thereon by the said Mary E. Thompson. That said encumbrance, with interest, amounting to $165. was paid off by said Thomas R. Riley out of the proceeds of the sale of the lot and improvements.

7. The defendants deny that said lot was sold without notice to the complainants, and say that the same was sold for the price of $2000. and no more.

8. The defendants admit that the complainants called on them for an account of the sale of said lot, and say that such an account has been furnished them. It is not true that Thomas R. Riley denied the right of the complainants to an accounting, but on the contrary he rendered the complainants an account.

9. We admit the truth of the complainants' contention as stated in paragraph nine of the bill.

10. We deny that there is now due the said Mary E. Thompson "the sum in excess of what said property sold for over and above the amount borrowed on it, to wit, $500., and the material bill of $536.99;" on the contrary we say that the complainants are only entitled to the surplus remaining, after payment of said encumbrance of $165; the Rosslyn Brick Company's bill of $75., insurance $9., Thomas R. Riley for money loaned, $500. and interest, Thomas R. Riley for lumber and mill-work $932.25, $350. for discount on notes for deferred purchase price of said lot and $250. for services.

8

And now having fully answered said bill, the defendants pray to be hence dismissed with their reasonable costs.

THOS. R. RILEY.
WM. W. RILEY.

We Thomas Riley and William W. Riley, on oath say that we have read the foregoing answer and know the contents thereof; that the facts therein stated upon our personal knowledge are true, and that the facts therein stated upon information and belief we believe to be true.

THOS. R. RILEY.
WM. W. RILEY.

Subscribed and sworn to before me this 28th day of December, A. D. 1905.

C. COLDEN MILLER,
Notary Public, D. C.

[SEAL.]

S. T. THOMAS,
Sol'r for Def'ts.

9 *Joinder in Issue.*

Filed December 29, 1905.

In the Supreme Court of the District of Columbia.

Eq. No. 25657.

MARY E. THOMPSON ET VIR.
vs.
THOS. R. RILEY and WM. W. RILEY.

The complainants join issue upon the joint answer of the defendants and will hear the case upon the pleadings and proof to be taken.

LEO SIMMONS,
Sol. for Complainants.

Memorandum.

December 29, 1905.—Referred to Auditor to state accounts.

10 *Auditor's Report.*

Filed March 3, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 25657.

MARY E. THOMPSON ET AL.
vs.
THOMAS R. RILEY ET AL.

This cause is referred to me to state the accounts between the parties. After due notice I proceeded with the reference.

It appears in the proof that in August 1903 the complainant through her husband and co-complainant, she being the owner of sublot 25 in block 4 of a tract of land known as the Palisades in the District of Columbia, and desiring to improve the said land, entered into an arrangement with the defendants pursuant to which the defendant Thomas R. Riley agreed to furnish certain building material for the construction of a house or money for that purpose, to the extent of $500. the complainant Francis I. Thompson executed his promissory note payable to the said Thomas R. Riley for the said sum of $500 with interest and the complainant Mary E. Thompson as part of the said arrangement executed and delivered a conveyance in the form of a deed in fee simple of the said property to the defendant William W. Riley the same to be given and accepted as security only for the repayment to Thomas R. Riley of the said loan or advance.

Thomas R. Riley furnished certain building material and money at various dates and in this reference presents an account of the same as claimed by him.

11 In the meantime the defendants without notice to the complainants sold and conveyed the said property receiving as the consideration therefor the sum of $2,000, $150 being in money and $1850 in notes payable monthly.

In the account presented by the defendants in this reference I find charges for building material furnished, some of the items of which are disputed by the complainants who in turn present and file an account rendered by Riley under date of November 7, 1903 at which date the delivery of material had been finished and the construction of the house completed. As no lumber was delivered after this date according to the proof, I find the defendants bound by the said statement of account the aggregate of that statement being $536.99. The defendant Thomas R. Riley submitted proof in the form of his checks payable to the said Francis I. Thompson which aggregate the sum of $475 in addition to which there is proof of the payment by the said Riley for brick material furnished of $75 and the payment of insurance of $9.00.

At the time of the conveyance to William W. Riley the property was subject to a deed of trust securing a sum of money for which the defendants paid as principal and interest the sum of $165. In addition to these several items of credit as against the proceeds of sale of the property the defendants claim an allowance of $350 as discount on the sale of the monthly notes taken from the purchaser and the sum of $250 as compensation to Thomas R. Riley for services in the premises. Both of these claims of credit are objected to and I do not find them sustained by the proof in the cause. It is

12 conceded that the conveyance by the complainants to William W. Riley was intended to be solely given and received as security for the payment of the indebtedness to be created by them to the defendant Thomas R. Riley, he having a market for certain merchandise in which he was a dealer. It is not shown that he supervised the construction of the improvement or performed any other service except the sale of his material and the advancing of certain moneys. In accordance with these facts and findings I have stated the account between the parties in the schedule herewith showing the balance due by the defendants to the complainant Mary E. Thompson.

JAS. G. PAYNE, *Auditor.*

13 *Thomas R. Riley in Account with Mary E. Thomas-,*

Dr.		
To Proceeds of sale of property described in bill of complaint		2,000.00
" Amount of promissory note of F. I. Thompson		500.00
		$2,500.00
Cr.		
By Cost of recording deed	1.25	
" Lumber and material delivered to complainant as per account rendered November 7th 1903	536.99	
" Check to F. I. Thompson, August 28th 1903	50.00	
" The same, September 26th	50.00	
" " " October 3rd	50.00	
" " " October 10th	50.00	
" " " October 17th	75.00	
" " " October 24th	50.00	
14		2,500.00
Cr.		
By The same, October 31st	75.00	
" " " November 7th	75.00	
" " " November 12th Paid Rosslyn Brick Company	75.00	
" " " February 20th 1904 Paid E. M. Clark	165.00	
" Amount of note of September 23rd 1903 with interest	505.00	
		1,758.24
		$741.76

JAS. G. PAYNE, *Auditor.*

Auditor's fees and costs $35.00.

15 THOMPSON
vs.
RILEY.

MONDAY, *January* 8, 1906—10:30 o'clock A. M.

Hearing pursuant to notice.

Present Messrs. Simmons for the complainants and S. T. Thomas for the defendants.

Mr. SIMMONS: Paragraph 3 of the bill sets forth the ownership by Mary E. Thompson of sub lot 25 in Block 4 of Clark's and Chappell's subdivision.

Paragraph 3 of the bill as to ownership as admitted by the answer.

Paragraph 4 of the bill sets forth that on the 23 of August 1903 the complainant conveyed the property to the defendants William W. Riley in fee simple and that the deed while being absolute in form was intended as the security for the payment of $500 borrowed money. The answers admit paragraph so far as it claims that the deed was intended as security only.

Paragraph 4 of the answer also admits the claims that the property was sold by the defendant William W. Riley for $2,000.

Attorney for the defendants has been notified to produce the vouchers and checks.

Adjourned to Monday, January 15, 1906, 10:30 A. M.

16 THOMPSON
vs.
RILEY.

TUESDAY, *January* 30, 1906—10:30 o'clock A. M.

Hearing pursuant to notice.
Present Messrs. Thomas and Simmons.

Mr. THOMAS R. RILEY having been sworn testified as follows:

By Mr. THOMAS:

Q. You are one of the defendants in this case? A. Yes.

Q. Are you acquainted with the complainant Mary F. Thompson and her husband Frank I. Thompson? A. I am acquainted with her husband.

Q. Do you remember the transaction mentioned in the bill the conveyance of a lot to your son by Mr. Thompson and his wife? A. Yes.

Q. Where was that lot? A. It is on the Conduit Road probably three miles from Georgetown.

Q. What is the size of the lot? A. 50 by 100 or 125.

Q. What was the condition of it with reference to the improvements when it was conveyed? A. There was a house on this lot not quite finished.

Q. What was the condition of the lot so far as being paid
17 for? A. It was not paid for.

Q. How much had been paid on it? A. $10.00.

Q. What was the price of the lot? A. $175.00.

Q. Now after the conveyance of the lot and unfinished house to your son was the house finished? A. Yes.

Q. Who finished it? A. The person to whom it was sold, I furnished the lumber.

Q. Prior to the time of that conveyance of that house to your son by Thompson and his wife what if anything did he or she owe you? A. She did not owe me anything, he owed me, it was he who made the arrangement and it was he who owed the money?

Q. How much money did he owe? A. In the neighborhood of $1500.

Q. What for? A. Lumber and money advanced.

Q. Lumber that went into this building? A. Yes.

Q. Money advanced for this building? A. Yes, he expected to make a loan on this building before its completion, he thought he had made such an arrangement with a Building Association in Georgetown, he thought they had agreed to loan him $1100.

Q. He said that? A. Yes, it was this he was going to pay
18 me.

Q. You say this house was conveyed to you in an unfinished condition? A. Yes.

Q. What became of Mr. Thompson? A. I could not say. Indeed the only time I have seen him was when I saw him in here the other day.

Q. Did he go off and leave the house? A. Yes and he could not be found.

Q. You never saw him again until you saw him in here? A. Yes. I made repeated efforts to locate him but was unsuccessful.

Q. Do you know where his wife lived? A. On the Brightwood Road, some where in the vicinity of Brightwood.

Q. Did you endeavor to find him there? A. I have sent there, I did not go myself.

Q. But was never able to find him? A. No.

Q. In the exceptions, the defendants except to your claim of credit for $77 for 2800 fee- of rustic lumber, August 6, 1903, look (at that) and see if you have any memorandum receipt for that lumber? A. August 6, 4,400 feet No. 1 Rustic siding.

Q. Have you got 2800 feet? A. Yes, August 6, 2800 feet each, two tickets 1400 feet each.

Q. Where was that lumber delivered? A. To Frank I. Thompson on the Conduit Road.

19 Q. At that house? A. Yes.

Q. Was that lumber worth $77? A. I think so.

Q. That was the market value of it? A. Yes.

Q. Was it used in this house? A. I presume so, it was delivered there.

Q. The defendant also excepts to item of August 6 in your account 2000 feet flooring $46, have you a ticket for that? A. Yes.

Q. Where was that flooring delivered? A. Frank I. Thompson Conduit Road.

Q. To the house in question? A. Yes.

Q. Have you a ticket for 4000 feet 6x6 sap shingle? A. Two tickets for 2000 each.

Q. Where were those shingles delivered? A. Frank I. Thompson Conduit Road.

Q. To the house in question? A. Yes, that was the only work that Thompson was at at that time.

Q. Was the charge of $46 for the flooring and $34 for the shingles proper charges? A. Yes.

Q. Who was Miss Alice Sherer, and C. B. Thompson who signed

these tickets? A. C. B. Thompson was Mr. Thompson's son,
20 I don't know who Alice Sherer was.

Q. In whose hand writing are the letters O K? A. O K were in hand writing of my son.

Q. What does this C mean? A. I don't know, that is some character they use in the office.

Q. Do you know the signature of Frank I. Thompson? A. I think I do.

Q. Look at the name Frank I. Thompson on this receipt dated August 6, for 1400 feet rustic siding, state whether that is the signature? A. I could not say whether that is or not, it looks like his writing.

Q. Will you say the same thing as to the ticket dated September 29 for 1800 feet sap shingles? A. Yes, that is his hand writing.

Mr. THOMAS: I offer these tickets in evidence in connection with Mr. Riley's testimony.

Mr. SIMMONS: I object to the ticket dated August 6, 1400 feet rustic siding and 2000, 6 By 20 No. 1 sap shingles on the ground that they are not receipted by Mr. Thompson or any one for him. I make no objection to the other two.

Q. Mr. Riley, the defendant further excepts to the credit you claim, check $75.00 Rosslyn Brick Co., dated November 12, 1903, and the check dated February 29, 1904 E. M. Clark $165, look at this check for $75.00 and state what connection that had with this house in question? A. That was in payment for the brick de-
21 livered to Mr. Thompson and used in the foundation of this building.

Q. Delivered by the Rosslyn Brick Co. A. Yes.

Q. Look at the check for $165 and state what connection that had with this house? A. This $165 was paid in payment of a trust that had been put on this land at the time of its purchase, the purchase price being $175 and $10 having been paid on account of it.

Q. That was the balance of the purchase money? A. Yes.

Q. Who was E. M. Clark. A. The owner of the land, one of the Clark Brother-, they control a considerable of that land on the Conduit Road.

Mr. THOMAS: I offer these checks in evidence.

Mr. SIMMONS: I object to the check for $75 as it has not been shown that $75 was ordered paid by Mr. Thompson or Mrs. Thompson or that it was a proper charge. I withdraw my objection to the check for $165.

Q. At the time this check for $75 was given, where was Thompson? A. That check was given to Thompson to pay that bill.

By Mr. SIMMONS:

Q. You have testified here that Mr. Thompson went off and left the house in an unfinished state, what was the condition of the house at the time this $75 check was given to Thompson? A. In the same

condition as when Thompson went away that brick went into the foundation.

22 Q. You handed him the check? A. That is my recollection?

Q. The check is dated November 12? A. The bill was not paid until that time.

Q. Is it not a fact that the house was finished at that time? A. No, it was finished as far as he went with it.

Q. Hadn't you completed furnishing lumber at that date? A. I don't know.

Q. Hadn't you furnished him everything at that time you were going to furnish? A. I think if Thompson could have completed his arrangement for his loan that he probably would have finished the house.

Q. Is it not a fact that your bill for lumber that you rendered Thompson and charge here, had all been furnished at that time? A. All been delivered.

Q. Was anything done on that house afterwards? A. Yes, after it was sold the cellar floor was put in and one or two little things that was required in the cellar and in the kitchen.

Q. Then Thompson had practically completed the house? A. Yes.

Q. You say you gave him that check to pay Rosslyn Co.? A. Yes.

Q. For the foundation brick? A. That is my recollec-

23 tion.

By Mr. THOMAS:

Q. Look at this note for $500 I hand you and state what connection that had. A. I loaned $500, had this note discounted in the Citizens' Bank, the note came due on the 23 of November 1903, but because the note came due his son came into the office.

Mr. SIMMONS: I object to anything the son said.

Q. Did Frank I. Thompson pay that note? A. He didn't pay it when it came due, I took it up at the Citizens' Bank myself and from that time until I saw him in here the other — I have not seen him.

Q. Has he ever paid you this $500? A. No.

Q. You have never gotten it except in connection with the sale of the house? A. No.

By Mr. SIMMONS:

Q. The note that you say here is for $500 was the vouchers for the checks you have offered here? A. I don't think so, Mr. Simmons.

Q. You don't mean to say that you gave him any more than these checks you brought here? A. I think so.

Q. I want you to be positive. Q. I would have to look over my papers to refresh my memory.

24 Q. Is it not a fact that he gave you that note that you might borrow that money from the Bank and give him the money as he wanted it? A. That may be.

Q. These checks that you have produced here were the proceeds of that note? A. That may be, I am not sure on that point.

Mr. THOMAS: I file this note in evidence.

By Mr. THOMAS:

Q. The next item excepted to is $350 for discount on deed of trust notes sold, what were those deed of trust notes, deferred purchase notes on this property? A. Notes $25 a month.
Q. How many? A. 74 one month a part.
Q. What did you do with those notes? A. I sold them.
Q. Through whom? A. Stubblefield Banking Company.
Q. At what discount.

Mr. SIMMONS: I object as immaterial.

A. $350.
Q. What was the aggregate amount of the notes? A. $1850.
Q. What did you sell the property for? A. $2000.
Q. The difference between $2000 and $1850 was cash? A. Yes.
Q. The defendants except further to $250 for services; what services were those Mr. Riley? A. Furnishing him money and going on his bond.
Q. Was that a reasonable charge? A. I think so.
Q. The defendant- further except to charges in the account submitted by you under date October 24, 26 and 27 1903, look at this account, state what they were and where they were furnished? A. 8 prs. blinds 8x16 $1.50, 10 prs. blinds 9x14 $1.45 2 prs. blinds 8x12 $2.25.
Q. Were these furnished at this house? A. Yes.
Q. Are those reasonable charges? A. Yes.
Q. That was October 24, how about October 26, are those correct? A. Yes.
Q. October 27th? A. Yes.
Q. Were the goods furnished at that house? A. Yes.
Q. Used in it? A. So far as I know.
Q. And the prices charged reasonable? A. Yes.
Q. What is this last pencil memorandum at the foot, here to do with this? A. I don't know what that is.
Q. It has nothing to do with it? A. It looks like the bookkeeper's hand writing, he will have to explain that.

By Mr. SIMMONS:

Q. You don't know anything about the price of this lot, what was paid for this lot? A. Only what was told me.
A. The deed of trust as you admit was conveyed to you to secure $500 for what lumber you furnished in the house? A. No, as I remember that case, that property was deeded to me outright in case they defaulted in the payment for this lumber and money that I had advanced to Mr. Thompson.
Q. It was intended as security to you? A. Well if you put it that way, but it was intended to pay me for what he had gotten.

Q. When did you sell this property? A. I could not tell you the date somewhere along about the latter part of 1904.

Q. Will you look at that and tell me if you wrote that? A. That seems to have been dictated by me, I don't know whether I dictated it Joe Cotter wrote it.

Q. It is noted on the letter dictated T. R. R. A. It looks as if I had dictated it.

Q. You said you could not hear from Mr. Thompson or find out where he was, that indicated that he had written you a letter about this matter? A. Yes.

Q. On March 2, 1904? A. It looks that way.

27 Mr. SIMMONS: I offer that letter in evidence marked 16.

Q. Now Mr. Riley will you look at that paper and tell me what it is? A. It seems to be a bill against Frank I. Thompson for material delivered on Conduit Road.

By the AUDITOR:

Q. Whose bill? A. My bill.

By Mr. SIMMONS:

Q. What is the date of the bill? A. November 7, 1903.

Q. Was the last charge on that bill which appears to be November 5, 1903, the last charge on the account you filed here is November 3, 1903 was not that bill rendered as the final account of the material furnished on that building. A. I could not say as to that.

Q. In sending out bills from your office they cover all material furnished up to that time? A. I presume so, I see on this bill he has been given credit for 1800 shingles.

Mr. SIMMONS: I offer that bill in evidence.

Q. Mr. Riley, now about this $350 did you sell this property at public or private sale? A. Private sale.

Q. Did you give Thompson notice that you were going to sell it. A. No.

Q. Did you notify him you had these notes on hand? A.
28 I am not sure.

Q. Did you notify him you were going to sell them at a discount of $350? A. I could not say as to that.

Q. Did you ever talk with Mrs. Thompson at all? A. I never saw Mrs. Thompson in my life.

Q. The services you claim to have rendered here was loaning this money? A. Yes and going on his bond, paying his bills?

Q. What bills did you pay except the check for $165? A. The Rosslyn Brick Company and then his own account that he was bringing in there.

Q. Your checks show the amounts disbursed by you? A. Yes.

Q. Those were made direct to him? A. Yes.

Q. You say this Rosslyn Brick Company check was given to Thompson to pay them? A. As I remember it.

Q. Do you think that is worth $250. A. Yes.

Q. Did Mr. Thompson agree to pay you for any services? A. I could not say.

Q. Did Mrs. Thompson? A. I have never seen Mrs. Thompson.

Q. Was there any agreement between Thompson and you to pay you for any services? A. No I had no arrangement with Thompson.

29 By Mr. THOMAS:

Q. You consider that a reasonable charge for the services you have rendered in this matter? A. Yes.

By Mr. SIMMONS:

Q. It is set forth in your answer that you rendered an account to this man, you don't mean to say that you had rendered any account until just before the filing of your answer? A. I presume not.

Q. The account you refer to as having rendered him was one given Mr. Thomas a few days before you filed your answer? A. Yes.

By Mr. THOMAS:

Q. Before the filing of this bill did Mr. Thompson request any account of you? A. No.

Q. Either of them? A. No, his wife, I have never seen.

By Mr. SIMMONS:

Q. Do you deny that fact that his counsel asked you for an account? A. Mr. Simmons asked me for an account.

Adjourned.

30 Thomas R. Riley, Lumber and Mill Work.

WASHINGTON, D. C., *March* 3, 1904.

Mr. F. I. Thompson, # 3434 Brightwood Ave. N. W., City.

DEAR SIR: I have your favor of March 2nd, and am glad to hear from you anyway.

I have written to you lots of times and this is the first reply that I have had.

I may be able to get my money out of the house, but it is too late now to talk with you in reference to the same.

Had you called when your note was due several months ago we could have arranged it, but as I have just remarked I am afraid it is too late now.

However, if I can be of any service to you at any time in any way please call and see me, and don't let this matter stand between us.

Come in and see me anyway.

Yours very truly, THOS. R. RILEY.

Dict. T. R. R.

31 *Decree.*

Filed May 17, 1906.

In the Supreme Court of the District of Columbia.

Equity Cause No. 25657, Doc. 57.

MARY E. THOMPSON ET AL., Plaintiffs,
vs.
THOMAS R. RILEY and WILLIAM W. RILEY, Defendants.

This cause coming on to be heard upon the exceptions filed by the defendants to the Auditor's report and having been argued by counsel of the respective parties and duly considered by the Court, it is this 17th day of May, 1906, adjudged, ordered and decreed that each and all of the exceptions made by the defendants to said Auditor's report be, and the same is hereby, overruled; and it is further adjudged, ordered and decreed that the said Auditor's report be, and the same is hereby, ratified and confirmed, and that the complainant, Mary F. Thompson, recover of the defendants the sum of seven hundred thirty-two dollars and seventy-six cents ($732.76), besides the cost of this suit to be taxed by the Clerk, for which amount execution shall issue as at law.

WENDELL P. STAFFORD, *Justice.*

From the above decree the defendants appeal to the Court of Appeals and bond to act as supersedeas is now fixed at $1500, bond for costs, if no supersedeas is taken, is now fixed for $100.00.

WENDELL P. STAFFORD, *Justice.*

32 *Memorandum.*

June 8, 1906.—Appeal Bond,—filed.

Designation to Clerk for Preparation of Transcript on Appeal.

Filed June 27, 1906.

In the Supreme Court of the District of Columbia.

In Equity. No. 25657.

MARY E. THOMPSON ET VIR.
vs.
THOMAS R. RILEY and WILLIAM W. RILEY.

To the Clerk of the Supreme Court of the District of Columbia:

In making the transcript of the record in the above case for the Court of Appeals, you will include:

1. The bill.
2. The answer of the defendants thereto.
3. Replication.
4. Mem. of reference to the Auditor.
5. Auditor's report and testimony annexed to same.
6. Final decree.
7. Mem. of approval of bond.

S. T. THOMAS,
Solic't'r for Def'ts.

33 Complainant's solicitor was served with a copy of the above notice by leaving it at his office on or about the 15th day of June 1906.

JAMES B. HORIGAN.

34 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 33, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 25,657 In Equity, wherein Mary E. Thompson, *et al.,* are Plaintiffs, and Thomas R. Riley, *et al.,* are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the city of Washington, in said District, this 10″ day of July, A. D. 1906.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 1706. Thomas R. Riley *et al.,* appellants, *vs.* Mary E. Thompson *et al.* Court of Appeals, District of Columbia. Filed Jul. 21, 1906. Henry W. Hodges, clerk.